

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MARJORIE PHILLIPS,

Plaintiff,

-against-

THE FASHION INSTITUTE OF TECHNOLOGY,  
MARY DAVIS, and MARILYN BARTON,

Defendants.

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CIVIL ACTION

Case No.: 1:20-cv-00221 (GBD)(SN)

**DECLARATION OF  
DEREK SELLS, ESQ.**

**DEREK SELLS, ESQ.**, declares, under the penalty of perjury, pursuant to 28 U.S.C. 1746, that the following is true and correct:

1. I am the Chairman and Partner of The Cochran Firm, attorneys for plaintiff Marjorie Phillips (“Phillips”) in the instant action. On behalf of plaintiff Phillips, I submit this Declaration in opposition to the three, separate motions for summary judgment made by the defendants herein: Defendant The Fashion Institute of Technology (“FIT”), defendant Mary Davis (“Davis”) and defendant Marilyn Barton (“Barton”).

2. In opposition to the defendants’ separate summary judgment motions, we hereby file:

- A. Plaintiff’s Response to Defendants’ Joint Rule 56.1 Statement.
- B. Plaintiff’s Rule 56.1 Counter-Statement of Material Facts.
- C. Plaintiff’s Omnibus Memorandum of Law in Opposition to the Separate Motions for Summary Judgment made by Defendant FIT, defendant Davis and defendant Barton.
- D. Affidavit of plaintiff Phillips (as part of the exhibits listed below).

3. Attached to the instant Declaration, we submit the following exhibits in

conjunction with our Rule 56.1 Statements (Response and Counter-Statement), Memorandum of Law and plaintiff Phillips' Affidavit.

**EXHIBITS**

- Ex. A: FIT Nondiscrimination and Anti-Harassment Policy (DFIT 361-372).
- Ex. B: Plaintiff Phillips' March 23, 2018 Affirmative Action Complaint to FIT (DFIT 073-077).
- Ex. C: 5-16-19 email from plaintiff Phillips to Deliwe Kekana regarding occurrence of 5-16-19 incident where Barton threatened to kill Phillips (DFIT083).
- Ex. D: Barton's statement to FIT concerning the 5-16-19 incident where she threatened to kill Phillips (DFIT 171-173).
- Ex. E: 6-18-19 FIT Meeting Minutes; FIT meeting including defendant Barton, Cynthia Glass, concerning the 5-16-19 incident where she threatened to kill Phillips (Barton\_42).
- Ex. F: 6-18-19 FIT Meeting Minutes; FIT meeting including defendant Barton, Cynthia Glass, concerning the 5-16-19 incident where she threatened to kill Phillips (DFIT 161).
- Ex. G: Phillips' 6-19-19 email to SUNY Chancellor concerning the 5-16-19 incident where she threatened to kill Phillips (Plaintiff Phillips 399-400).
- Ex. H: 8-8-19 SUNY letter responding to Phillips' 6-19-19 email (Plaintiff Phillips 392).
- Ex. I: 2-15-19 Phillips email to Deliwe Kekana of FIT, inquiring into status of FIT investigation into Phillips March 2018 Affirmative Action complaint (Plaintiff 18).
- Ex. J: 10-7-9 FIT/Kekana Affirmative Action Office investigation report concerning Phillips March 2018 Affirmative Action complaint (DFIT 027-043).
- Ex. K: Plaintiff Phillips' deposition of 9-9-21.
- Ex. L: Plaintiff Phillips' deposition of 9-10-21.
- Ex. M: Plaintiff Phillips' deposition of 10-20-21.

Ex. N: Defendant FIT/Kekana deposition of 12-16-21.

Ex. O: Defendant FIT/Glass deposition of 12-20-21.

Ex. P: Defendant Davis deposition of 12-21-21.

Ex. Q: Defendant Barton deposition of 12-23-21.

Ex. R: Plaintiff Phillips Affidavit.

Ex. A to Phillips Affidavit: emails (Plaintiff Phillips 158-164).

Ex. B to Phillips Affidavit: emails (Plaintiff 18; DFIT083; DFIT 791; Plaintiff Phillips 271).

Ex. S: 5-20-19 email from Cynthia Glass (DFIT 237).

Ex. T: 11-8-19 email from Phillips to Mary Davis (DFIT 791).

Ex. U: 11-11-19 email from Mary Davis (DFIT 796).

4. For the reasons set forth in our Memorandum of Law, plaintiff Phillips respectfully requests this Court deny the three, separate motions for summary judgment made by defendant FIT, defendant Davis and defendant Barton.



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**DEREK SELLS, ESQ.**

Dated: October 26, 2022